

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE JULY 1, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 679

Introduced by Assembly Member Chavez

February 19, 2003

An act to add Article 6 (commencing with Section 10237) to Chapter 3 of Part 1 of Division 4 of, and to repeal Section 10229 of, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 679, as amended, Chavez. Real estate.

Existing law, the Real Estate Law, requires the licensure of a person by the Real Estate Commissioner to engage in the business of, act in the capacity of, or advertise or assume to act as, a real estate broker or a real estate salesman within this state. Existing law requires a real estate broker to file certain information with the commissioner relative to the conducting of a transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, otherwise known as a multilender transaction, as specified. Existing law prohibits the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon real property senior to them, from exceeding certain percentages of the current market value of the real property. Existing law authorizes the percentages to be exceeded if a

broker makes a specified determination and a written statement or appraisal establishing the determination is made. A violation of the Real Estate Law is a crime.

This bill would revise these provisions to make them applicable to transactions involving the sale or offer to sell a series of notes secured directly by interests in one or more parcels of real property or the sale of undivided interests in a note secured directly by one or more parcels of real property. The bill would prohibit the amount of those notes or interests and encumbrances from exceeding certain percentages of the current market value for each parcel of real property if the notes or interests are secured by more than one parcel of real property. The bill would require the written statement or appraisal delivered to each purchaser to include each parcel of real property securing the notes or interests. *The bill would also define the term “current market value” for purposes of construction or rehabilitation loans as the value of the completed project if certain conditions are met.*

Because a violation of the bill’s provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10229 of the Business and Professions
- 2 Code is repealed.
- 3 SEC. 2. Article 6 (commencing with Section 10237) is added
- 4 to Chapter 3 of Part 1 of Division 4 of the Business and Professions
- 5 Code, to read:
- 6
- 7 Article 6. Claim of Exemption From Securities Qualification
- 8
- 9 10237. Any transaction that involves the sale of or offer to sell
- 10 a series of notes secured directly by interests in one or more parcels
- 11 of real property, or the sale of undivided interests in a note secured



1 directly by one or more parcels of real property equivalent to a
2 series transaction, shall comply with all of the following:

3 ~~(a) (1) provisions of this article.~~

4 10238. (a) A notice in the following form and containing the
5 following information shall be filed with the commissioner within
6 30 days after the first transaction and within 30 days of any
7 material change in the information required in the notice:

8
9 TO: Real Estate Commissioner
10 Mortgage Loan Section
11 2201 Broadway
12 Sacramento, CA 95818
13

14 This notice is filed pursuant to Section ~~10229~~ 10237 of the Business and
15 Professions Code.

16
17 () Original Notice () Amended Notice
18

19 1. Name of Broker conducting transaction under Section ~~10229~~ 10237:
20

21 _____
22

23 2. Broker license identification number: _____
24

25 3. List the month the fiscal year ends: _____
26

27 4. Broker's telephone number: _____
28

29 5. Firm name (if different from "I"):
30

31 _____
32

33 6. Street address (main location):
34

35 _____
36

37 # and Street City State ZIP Code



- 1 7. Mailing address (if different from “6”):
2
3 _____
4
- 5 8. Servicing ~~Agent~~ agent: Identify by name, address, and telephone
6 number the person or entity who will act as the servicing agent in
7 transactions pursuant to Section ~~10229~~ 10237 (including the
8 undersigned Broker if that is the case):
9
10 _____
11 _____
12
- 13 9. Total number of multilender notes arranged: _____
14
- 15 10. Total number of interests sold to investors on the
16 multilender’s notes: _____
17
- 18 11. Inspection of trust account (before answering this question, review
19 the provisions of paragraph (3) of subdivision ~~(j)~~ (k) of Section
20 ~~10229~~ 10238).
21
- 22 CHECK ONLY ONE OF THE FOLLOWING:
23
- 24 () The undersigned Broker is (or expects to be) required to file reports
25 of inspection of its trust account(s) with the Real Estate
26 Commissioner pursuant to paragraph (3) of subdivision ~~(j)~~ (k) of
27 Section ~~10229~~ 10238.
28
- 29 Amount of Multilender Payments Collected Last Fiscal Quarter: _____
30
- 31 Total Number of Investors Due Payments Last Fiscal Quarter: _____
32
- 33 () The undersigned Broker is NOT (or does NOT expect to be) required to
34 file reports of inspection of its trust account(s) with the Real Estate
35 Commissioner pursuant to paragraph (3) of subdivision ~~(j)~~ (k) of
36 Section ~~10229~~ 10238.
37

12. Signature. The contents of this notice are true and correct.

Date

Type Name of Broker

Signature of Broker or of Designated Officer of
Corporate Broker

Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE
BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE
IN THE INFORMATION REQUIRED TO BE SET FORTH
HEREIN.

~~(2)~~

(b) A broker or person who becomes the servicing agent for
notes or interest sold pursuant to this ~~section~~ *article*, upon which
payments due during any period of three consecutive months in the
aggregate exceed one hundred twenty-five thousand dollars
(\$125,000) or the number of persons entitled to the payments
exceeds 120, shall file the notice required by ~~paragraph (1)~~
subdivision (a) with the commissioner within 30 days after
becoming the servicing agent.

~~(b)~~

(c) All advertising employed for transactions under this ~~section~~
article shall ~~(1)~~ show the name of the broker and ~~(2)~~ comply with
Section 10235 of the ~~Business and Professions Code~~ and Sections
260.302 and 2848 of Title 10 of the California Code of
Regulations. Brokers and their agents are cautioned that a
reference to a prospective investor that a transaction is conducted
under this ~~section~~ *article* may be deemed misleading or deceptive
if this representation may reasonably be construed by the investor
as an implication of merit or approval of the transaction.

~~(e)~~

(d) Each parcel of real property directly securing the notes or
interests is located in this state, the note or notes are not by their
terms subject to subordination to any subsequently created deed of

1 trust upon the real property, and the note or notes are not
2 promotional notes secured by liens on separate parcels of real
3 property in one subdivision or in contiguous subdivisions. For
4 purposes of this subdivision, a promotional note means a
5 promissory note secured by a trust deed, executed on unimproved
6 real property or executed after construction of an improvement of
7 the property but before the first purchase of the property as so
8 improved, or executed as a means of financing the first purchase
9 of the property as so improved, that is subordinate, or by its terms
10 may become subordinate, to any other trust deed on the property.
11 However, the term “promotional note” does not include either of
12 the following:

13 (1) A note that was executed in excess of three years prior to
14 being offered for sale.

15 (2) A note secured by a first trust deed on real property in a
16 subdivision that evidences a bona fide loan made in connection
17 with the financing of the usual cost of the development in a
18 residential, commercial, or industrial building or buildings on the
19 property under a written agreement providing for the
20 disbursement of the loan funds as costs are incurred or in relation
21 to the progress of the work and providing for title insurance
22 ensuring the priority of the security as against mechanic’s and
23 materialmen’s liens or for the final disbursement of at least 10
24 percent of the loan funds after the expiration of the period for the
25 filing of mechanic’s and materialmen’s liens.

26 ~~(d)~~

27 (e) The notes or interests are sold by or through a real estate
28 broker, as principal or agent. At the time the interests are originally
29 sold or assigned, neither the broker nor an affiliate of the broker
30 shall have an interest as owner, lessor, or developer of the property
31 securing the loan, or any contractual right to acquire, lease, or
32 develop the property securing the loan. This provision does not
33 prohibit a broker from conducting the following transactions if, in
34 either case, the disclosure statement furnished by the broker
35 pursuant to subdivision ~~(k)~~ (l) discloses the interest of the broker
36 or affiliate in the transaction and the circumstances under which
37 the broker or affiliate acquired the interest:

38 (1) A transaction in which the broker or an affiliate of the
39 broker is acquiring the property pursuant to a foreclosure under,
40 or sale pursuant to, a deed of trust securing a note for which the



broker is the servicing agent or that the broker sold to the holder or holders.

(2) A transaction in which the broker or an affiliate of the broker is reselling from inventory property acquired by the broker pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or that the broker sold to the holder or holders.

~~(e)~~

(f) (1) The notes or interests shall not be sold to more than 10 persons, each of whom meets one or both of the qualifications of income or net worth set forth below and signs a statement, which shall be retained by the broker for four years, conforming to the following:

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true:

() My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

() My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.

Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) A husband and wife and their dependents, and an individual and his or her dependents, shall be counted as one person.

(4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by an individual and the individual's spouse or the individual's dependents, or any combination thereof, shall not be counted separately from the individual, but the investments of these entities shall be aggregated with those of the individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated

1 under this subdivision, the adjusted gross income or net worth of
2 these entities may also be aggregated with the net worth, income,
3 or both, of the individual.

4 (5) The “institutional investors” enumerated in subdivision (i)
5 of Section 25102 or subdivision (c) of Section 25104 of the
6 Corporations Code, or in a rule adopted pursuant thereto, shall not
7 be counted.

8 ~~(f)~~

9 (6) *A partnership, limited liability company, corporation, or*
10 *other organization that was not specifically formed for the purpose*
11 *of purchasing the security offered in reliance upon this exemption*
12 *from securities qualification is counted as one person.*

13 (g) The notes or interests of the purchasers shall be identical in
14 their underlying terms, including the right to direct or require
15 foreclosure, rights to and rate of interest, and other incidents of
16 being a lender, and the sale to each purchaser pursuant to this
17 section shall be upon the same terms, subject to adjustment for the
18 face or principal amount or percentage interest purchased and for
19 interest earned or accrued. This subdivision does not preclude
20 different selling prices for interests to the extent that these
21 differences are reasonably related to changes in the market value
22 of the loan occurring between the sales of these interests. The
23 interest of each purchaser shall be recorded.

24 ~~(g)~~

25 (h) (1) Except as provided in paragraph (2), the aggregate
26 principal amount of the notes or interests sold, together with the
27 unpaid principal amount of any encumbrances upon the real
28 property senior thereto, shall not exceed the following percentages
29 of the current market value of each parcel of the real property, as
30 determined in writing by the broker or appraiser pursuant to
31 Section 10232.6, plus the amount for which the payment of
32 principal and interest in excess of the percentage of current market
33 value is insured for the benefit of the holders of the notes or
34 interests by an insurer admitted to do business in this state by the
35 Insurance Commissioner:

- 36
- | | | |
|--------|---|-----|
| 37 (A) | Single-family residence, owner occupied | 80% |
| 38 (B) | Single-family residence, not owner occupied | 75% |
| 39 (C) | Commercial and income-producing properties | 65% |

- (D) Single-family residentially zoned lot or parcel which has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel 65%
- (E) Land that has been zoned for (and if required, approved for subdivision as) commercial or residential development . . . 50%
- (F) Other real property 35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to subdivision (k).

(3) A copy of the appraisal or the broker's evaluation, for each parcel of real property securing the notes or interests, shall be delivered to each purchaser. The broker shall advise purchasers of their right to receive a copy. For purposes of this paragraph, "appraisal" means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless the person so employed is qualified on the basis of special training, preparation, or experience.



1 (4) *For construction or rehabilitation loans, the term “current*
2 *market value” may be deemed to be the value of the completed*
3 *project if the following safeguards are met:*

4 (A) *An independent neutral third-party escrow holder is used*
5 *for all deposits and disbursements.*

6 (B) *The loan is fully funded, with the entire loan amount to be*
7 *deposited in escrow prior to recording of the deed or deeds of trust.*

8 (C) *A comprehensive, detailed, draw schedule is used to ensure*
9 *proper and timely disbursements to allow for completion of the*
10 *project.*

11 (D) *The disbursement draws from the escrow account are based*
12 *on verification from an independent qualified person who certifies*
13 *that the work completed to date meets the related codes and*
14 *standards and that the draws were made in accordance with the*
15 *construction contract and draw schedule. For purposes of this*
16 *subparagraph, “independent qualified person” means a person*
17 *who is not an employee, agent, or affiliate of the broker and who*
18 *is a licensed architect, general contractor, structural engineer, or*
19 *active local government building inspector acting in his or her*
20 *official capacity.*

21 (E) *An appraisal is completed by a qualified and licensed*
22 *appraiser in accordance with the Uniform Standards of*
23 *Professional Appraisal Practice (USPAP).*

24 (F) *In addition to the transaction documentation required by*
25 *subdivision (i), the documentation shall include a detailed*
26 *description of actions that may be taken in the event of a failure to*
27 *complete the project, whether that failure is due to default,*
28 *insufficiency of funds, or other causes.*

29 (G) *The entire amount of the loan does not exceed two million*
30 *five hundred thousand dollars (\$2,500,000).*

31 (5) *If a note or an interest will be secured by more than one*
32 *parcel of real property, for the purpose of determining the*
33 *maximum amount of the note or interest, each security property*
34 *shall be assigned a portion of the note or interest which shall not*
35 *exceed the percentage of current market value determined by, and*
36 *in accordance with, the provisions of paragraphs (1) and (2).*

37 ~~(h)~~

38 (i) *The documentation of the transaction shall require that (1)*
39 *a default upon any interest or note is a default upon all interests or*
40 *notes and (2) the holders of more than 50 percent of the record*

1 *recorded* beneficial interests of the notes or interests may govern
2 the actions to be taken on behalf of all holders in accordance with
3 Section 2941.9 of the Civil Code in the event of default or
4 foreclosure for matters that require direction or approval of the
5 holders, including designation of the broker, servicing agent, or
6 other person acting on their behalf, and the sale, encumbrance, or
7 lease of real property owned by the holders resulting from
8 foreclosure or receipt of a deed in lieu of foreclosure. The terms
9 called for by this subdivision may be included in the deed of trust,
10 in the assignment of interests, or in any other documentation as is
11 necessary or appropriate to make them binding on the parties.

12 ~~(i)~~

13 (j) (1) The broker shall not accept any purchase or loan funds
14 or other consideration from a prospective lender or purchaser, or
15 directly or indirectly cause the funds or other consideration to be
16 deposited in an escrow or trust account, except as to a specific loan
17 or note secured by a deed of trust that the broker owns, is
18 authorized to negotiate, or is unconditionally obligated to buy.

19 (2) All funds received by the broker from the purchasers or
20 lenders shall be handled in accordance with Section 10145 for
21 disbursement to the persons thereto entitled upon recordation of
22 the interests of the purchasers or lenders in the note and deed of
23 trust. No provision of this ~~section~~ *article* shall be construed as
24 modifying or superseding applicable law regulating the
25 escrowholder in any transaction or the handling of the escrow
26 account.

27 (3) The books and records of the broker or servicing agent, or
28 both, shall be maintained in a manner that readily identifies
29 transactions under this ~~section~~ *article* and the receipt and
30 disbursement of funds in connection with these transactions.

31 (4) If required by paragraph (3) of subdivision ~~(j)~~ (k), the
32 review by the independent certified public accountant shall
33 include a sample of transactions, as reflected in the records of the
34 trust account required pursuant to paragraph (1) of subdivision ~~(j)~~
35 (k), and the bank statements and supporting documents. These
36 documents shall be reviewed for compliance with this ~~section~~
37 *article* with respect to the handling and distribution of funds. The
38 sample shall be selected at random by the accountant from all these
39 transactions and shall consist of the following: (A) three sales
40 made or 5 percent of the sales made pursuant to this ~~section~~ *article*



1 during the period for which the examination is conducted,
2 whichever is greater, and (B) 10 payments processed or 2 percent
3 of payments processed under this ~~section~~ *article* during the period
4 for which the examination is conducted, whichever is greater.

5 (5) For the purposes of this subdivision, the transaction that
6 constitutes a “sale” is the series of transactions by which a series
7 of notes of a maker, or the interests in the note of a maker, are sold
8 or issued to their various purchasers under this ~~section~~ *article*,
9 including all receipts and disbursements in that process of funds
10 received from the purchasers or lenders. The transaction that
11 constitutes a “payment,” for the purposes of this subdivision, is
12 the receipt of a payment from the person obligated on the note or
13 from some other person on behalf of the person so obligated,
14 including the broker or servicing agent, and the distribution of that
15 payment to the persons entitled thereto. If a payment involves an
16 advance paid by the broker or servicing agent as the result of a
17 dishonored check, the inspection shall identify the source of funds
18 from which the payment was made or, in the alternative, the steps
19 that are reasonably necessary to determine that there was not a
20 disbursement of trust funds. The accountant shall inspect for
21 compliance with the following specific provisions of this section:
22 paragraphs (1), (2), and (3) of subdivision ~~(i)~~ *(j)* and paragraphs
23 (1) and (2) of subdivision ~~(j)~~ *(k)*.

24 (6) Within 30 days of the close of the period for which the
25 report is made, or within any additional time as the commissioner
26 may in writing allow in a particular case, the accountant shall
27 forward to the broker or servicing agent, as the case may be, and
28 to the commissioner, the report of the accountant, stating that the
29 inspection was performed in accordance with this section, listing
30 the sales and the payments examined, specifying the nature of the
31 deficiencies, if any, noted by the accountant with respect to each
32 sale or payment, together with any further information as the
33 accountant may wish to include, such as corrective steps taken
34 with respect to any deficiency so noted, or stating that no
35 deficiencies were observed. If the broker meets the threshold
36 criteria of Section 10232, the report of the accountant shall be
37 submitted as part of the quarterly reports required under Section
38 10232.25.

39 ~~(j)~~

(k) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 under this chapter, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The broker shall offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this ~~section~~ article. The agreement shall require all of the following:

(1) (A) That payments received on the note or notes be deposited immediately to a trust account maintained in accordance with this section and with the provisions for trust accounts of licensed real estate brokers contained in Section 10145 and Article 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of the California Code of Regulations.

(B) That payments deposited pursuant to subparagraph (A) shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received.

(2) That payments received on the note or notes shall be transmitted to the purchasers or lenders pro rata according to their respective interests within 25 days after receipt thereof by the agent. If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, this ~~section~~ article does not authorize the broker, servicing agent, or any other person to issue, or to engage in any practice constituting, any guarantee or to engage in the practice of advancing payments on behalf of the borrower.

(3) If the broker or person who is or becomes the servicing agent for notes or interests sold pursuant to this ~~section~~ article upon which the payments due during any period of three

1 consecutive months in the aggregate exceed one hundred
2 twenty-five thousand dollars (\$125,000) or the number of persons
3 entitled to the payments exceeds 120, the trust account or accounts
4 of that broker or affiliate shall be inspected by an independent
5 certified public accountant at no less than three-month intervals
6 during the time the volume is maintained. Within 30 days after the
7 close of the period for which the review is made, the report of the
8 accountant shall be forwarded as provided in paragraph (5) of
9 subdivision ~~(i)~~ (j). If the broker is required to file an annual report
10 pursuant to subdivision ~~(n)~~ or (o) or pursuant to Section 10232.2,
11 the quarterly report pursuant to this subdivision need not be filed
12 for the last quarter of the year for which the annual report is made.
13 For the purposes of this subdivision, an affiliate of a broker is any
14 person controlled by, controlling, or under common control with
15 the broker.

16 (4) Unless the servicing agent will receive notice pursuant to
17 Section 2924b of the Civil Code, the servicing agent shall file a
18 request for notice of default upon any prior encumbrances and
19 promptly notify the purchasers or lenders of any default on the
20 prior encumbrances or on the note or notes subject to the servicing
21 agreement.

22 (5) The servicing agent shall promptly forward copies of the
23 following to each purchaser or lender:

24 (A) Any notice of trustee sale filed on behalf of the purchasers
25 or lenders.

26 (B) Any request for reconveyance of the deed of trust received
27 on behalf of the purchasers or lenders.

28 ~~(k)~~

29 (l) The broker shall disclose in writing to each purchaser or
30 lender the material facts concerning the transaction on a disclosure
31 form adopted or approved by the commissioner pursuant to
32 Section 10232.5, subject to the following:

33 (1) The disclosure form shall include a description of the terms
34 upon which the note and deed of trust are being sold, including the
35 terms of the undivided interests being offered therein, including
36 the following:

37 (A) In the case of the sale of an existing note:

38 (i) The aggregate sale price of the note.

39 (ii) The percent of the premium over or discount from the
40 principal balance plus accrued but unpaid interest.



1 (iii) The effective rate of return to the purchasers if the note is
2 paid according to its terms.

3 (iv) The name and address of the escrowholder for the
4 transaction.

5 (v) A description of, and the estimated amount of, each cost
6 payable by the seller in connection with the sale and a description
7 of, and the estimated amount of, each cost payable by the
8 purchasers in connection with the sale.

9 (B) In the case of the origination of a note:

10 (i) The name and address of the escrowholder for the
11 transaction.

12 (ii) The anticipated closing date.

13 (iii) A description of, and the estimated amount of, each cost
14 payable by the borrower in connection with the loan and a
15 description of, and the estimated amount of, each cost payable by
16 the lenders in connection with the loan.

17 (C) In the case of a transaction involving a note or interest
18 secured by more than one parcel of real property, in addition to the
19 requirements of subparagraphs (A) and (B):

20 (i) The address, description, and estimated fair market value of
21 each property securing the loan.

22 (ii) The amount of the available equity in each property
23 securing the loan after the loan amount to be apportioned to each
24 property is assigned.

25 (iii) The loan to value percentage for each property after the
26 loan amount to be apportioned to each property is assigned
27 pursuant to subdivision ~~(g)~~ (h).

28 (2) A copy of the written statement or information contained
29 therein, as required by paragraph (2) of subdivision ~~(g)~~ (h), shall
30 be included in the disclosure form.

31 (3) Any interest of the broker or affiliate in the transaction, as
32 described in subdivision ~~(d)~~ (e), shall be included with the
33 disclosure form.

34 (4) When the particular circumstances of a transaction make
35 information not specified in the disclosure form material or
36 essential to keep the information provided in the form from being
37 misleading, and the other information is known to the broker, the
38 other information shall also be provided by the broker.

39 (5) If more than one parcel of real property secures the notes or
40 interests, the disclosure form shall also fully disclose any risks to

1 investors associated with securing the notes or interests with
2 multiple parcels of real property.

3 ~~(l)~~

4 (m) The broker or servicing agent shall furnish any purchaser
5 of a note or interest, upon request, with the names and addresses
6 of the purchasers of the other notes or interests in the loan.

7 ~~(m)~~

8 (n) No agreement in connection with a transaction covered by
9 this ~~section~~ article shall grant to the real estate broker, the
10 servicing agent, or any affiliate of the broker or agent the option
11 or election to acquire the interests of the purchasers or lenders or
12 to acquire the real property securing the interests. This subdivision
13 shall not prohibit the broker or affiliate from acquiring the
14 interests, with the consent of the purchasers or lenders whose
15 interests are being purchased, or the property, with the consent of
16 the purchasers or lenders, if the consent is given at the time of the
17 acquisition.

18 ~~(n)~~

19 (o) Each broker who conducts transactions under this ~~section~~
20 article, or broker or person who becomes the servicing agent for
21 notes or interest sold pursuant to this ~~section~~ article, who meets the
22 criteria of paragraph (3) of subdivision ~~(j)~~ (k) shall file with the
23 commissioner an annual report of a review of its trust account. The
24 report shall be prepared and filed in accordance with subdivision
25 (a) of Section 10232.2 and the rules and procedures thereunder of
26 the commissioner. That report shall cover the broker's transactions
27 under this ~~section~~ article and, if the broker also meets the threshold
28 criteria set forth in Section 10232, the broker's transactions subject
29 to that section shall be included as well.

30 ~~(o)~~

31 (p) Each broker conducting transactions pursuant to this
32 ~~section~~ article, or broker or person who becomes the servicing
33 agent for notes or interest sold pursuant to this ~~section~~ article, who
34 meets the criteria of paragraph (3) of subdivision ~~(j)~~ (k) shall file
35 with the commissioner a report of the transactions that is prepared
36 in accordance with subdivision (c) of Section 10232.2. If the
37 broker also meets the threshold criteria of Section 10232, the
38 report shall include the transactions subject to that section as well.
39 This report shall be confidential pursuant to subdivision (f) of
40 Section 10232.2.



~~(p)~~

10239. The jurisdiction of the Commissioner of Corporations under the Corporate Securities Law of 1968 shall be neither limited nor expanded by this ~~section~~ *article*. Nothing in this ~~section~~ *article* shall be construed to supersede or restrict the application of the Corporate Securities Law of 1968. A transaction under this ~~section~~ *article* shall not be construed to be a transaction involving the issuance of securities subject to authorization by the Real Estate Commissioner under subdivision (e) of Section 25100 of the Corporations Code.

~~(q)~~

10239.1. Nothing in this ~~section~~ *article* shall be construed to change the agency relationships between the parties where they exist or limit in any manner the fiduciary duty of brokers to borrowers, lenders, and purchasers of notes or interests in transactions subject to this ~~section~~ *article*.

~~(r)~~

10239.2. For the purposes of this ~~section~~ *article*, the following definitions shall apply:

~~(1)~~

(a) “Broker” means a person licensed as a broker under this part.

~~(2)~~

(b) “Affiliate” means a person controlled by, controlling, or under common control with, the broker.

~~(3)~~

(c) “Servicing agent” means the real estate broker or person exempted from the licensing requirements for real estate brokers under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 under this chapter, to act as agent for the purchasers or lenders to service the notes and deeds of trust, including the handling the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default.

~~(4)~~

(d) Except as provided in paragraph ~~(4)~~ (5) of subdivision ~~(i)~~ (j) of Section 10238, the terms “sale” and “offer to sell,” shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction.

~~(s) (1)~~

1 10239.3. (a) If any person other than a real estate broker
2 makes or keeps any of the books, accounts, or other records
3 maintained in connection with a transaction described in this
4 ~~section~~ article, the provisions of this ~~section~~ article and of any
5 regulation or order issued under this section shall apply to the
6 person with respect to the performance of those services and with
7 respect to those books, accounts, and other records to the same
8 extent as if the person were the broker.

9 ~~(2)~~

10 (b) If any person other than an affiliate of a broker makes or
11 keeps any of the books, accounts, or other records maintained in
12 connection with a transaction described in this ~~section~~ article, or
13 in the case of an affiliate other than a parent or subsidiary of the
14 broker, the provisions of this ~~section~~ article and of any regulation
15 or order issued under this ~~section~~ article shall apply to the person
16 with respect to those books, accounts, and other records to the
17 same extent as if the person were the affiliate.

18 10239.4. *This article applies only to the exemption from*
19 *securities qualification claimed under Section 25102.5 of the*
20 *Corporations Code. This article does not apply to any other*
21 *exemption from securities qualification, including subdivision (e)*
22 *of Section 25102 of the Corporations Code, which may be claimed*
23 *without complying with this article, or to any permit to qualify the*
24 *offer and sale of securities under the Corporate Securities Law of*
25 *1968. A real estate broker, when engaging in acts for which a*
26 *license is required, who arranges a transaction pursuant to this*
27 *article or pursuant to an offering subject to the Corporations*
28 *Code, shall clearly indicate in the broker's transaction file the*
29 *provision of the Corporate Securities Law of 1968 pertaining to*
30 *qualification or exemption from qualification under which the*
31 *transaction is being conducted, and shall retain this information*
32 *for the period specified in subdivision (a) of Section 10148.*

33 SEC. 3. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

O

